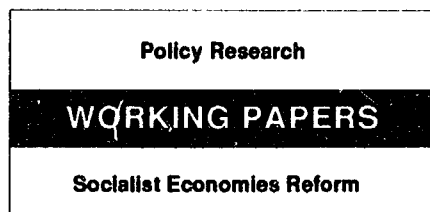


WPS 893



Country Economics Department  
The World Bank  
April 1992  
WPS 893

# **The Evolving Legal Framework for Private Sector Activity in Slovenia**

Cheryl W. Gray  
and  
Franjo D. Stiblar

**In moving toward a market economy, Slovenia is working hard to create a legal framework that can foster the growth of the private sector.**

This paper — a product of the Socialist Economies Reform Unit, Country Economics Department — is part of a larger research effort on legal reform in Central and Eastern Europe. Copies are available free from the World Bank, 1818 H Street NW, Washington, DC 20433. Please contact CECSE, room N6-035, extension 37188 (April 1992, 35 pages).

The government of Slovenia is moving rapidly to promote the growth of an efficient market economy. One of the most important tasks it faces is the development of a legal framework that can act as a decentralized “invisible hand” to replace previous administrative controls and steer the private market in an efficient direction.

Gray and Stiblar describe the current legal framework in Slovenia in several areas — including contract, company, bankruptcy, constitutional, real property, intellectual property, foreign investment, and antimonopoly law. These areas of law define (1) property rights, (2) the means to exchange them, and (3) the rules for competitive market behavior. They form the bedrock of a legal system for a market economy.

The situation that Slovenia faces in undertaking legal reforms differs from that for other Central and Eastern European (CEE) countries for three reasons. First, Yugoslavia took an independent course and began experimenting with the introduction of market forces soon after World War II. As a result, Slovenia — which was the richest of the Yugoslav republics — leads other CEE countries in standard of living, experience with markets, and openness to influences from abroad (particularly from Western Europe). Second, unlike other CEE countries, the federal structure of Yugoslavia over the past 40 years has granted considerable law-making powers to the republics. The issue of federal-republic legal relations and “conflicts of laws” has thus always been central. Third,

Slovenia is trying to resolve the question of which Yugoslav laws to adopt and which to replace with wholly new Slovene legislation. Legal “succession” has become a major issue.

Slovenia has progressed steadily toward creating a basic legal framework in which the private sector can grow and develop. It benefits from the efforts that Yugoslav economic and legal reformers have made since mid-1988, and from its willingness to adopt many of the Yugoslav solutions upon independence rather than trying to start again from scratch.

Few changes appear to be needed in some areas of law — including company, foreign investment, and intellectual property law. But in others, such as bankruptcy and antimonopoly law, both the legal framework and the legal institutions to interpret and implement the law still lack an adequate structure and sufficient credibility to support a private market economy. As in other post-socialist economies, real property rights is an area of tremendous uncertainty, both because of Slovenia’s determination to reverse the past through reprivatization and because of the limits it places on foreign ownership.

Finally, true legal reform — not just on paper — cannot move more quickly than political and economic reform. If Slovenia can advance on the political and economic fronts as well in 1992, it can create an attractive setting for new private investment.

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Much of the information in this article was obtained from personal interviews with Slovene lawyers, judges, and government officials.

The Evolving Legal Framework  
for Private Sector Activity  
in Slovenia

The government of Slovenia is moving rapidly to promote the growth of an efficient market economy and the private sector. One of the major tasks it faces is the development of a legal framework that can act as a decentralized "invisible hand" to replace previous administrative controls and steer the private market in an efficient direction. This paper describes the current legal framework in Slovenia in several areas--including constitutional, real property, intellectual property, company, foreign investment, bankruptcy, contract, and antimonopoly law.<sup>1</sup> These areas of law serve to define (i) property rights, (ii) the means to exchange them, and (iii) the rules for competitive market behavior. In essence they form the bedrock of a legal system for a market economy.<sup>2</sup>

The Slovene case is rather unique in Central and Eastern Europe ("CEE"); for three reasons. First, Yugoslavia took an independent course and began experimenting with the introduction of market forces soon after World War II. As a result, Slovenia--which was the richest of the Yugoslav Republics--is ahead of other CEE countries in standard of living, experience with markets, and openness to influences from abroad (particularly from Western Europe). Second, unlike other CEE countries, the federal structure of Yugoslavia over the past 40 years has given large lawmaking powers to the individual Republics, and the issue of Federal-Republic legal relations and "conflicts of laws" has thus always been central. Third, Slovenia is trying to resolve the issue of which Yugoslav laws to adopt and which to replace with wholly new Slovene legislation. Legal "succession" has become a major issue.

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<sup>1</sup> This paper is part of a larger research project sponsored by CECSE and LEG to study evolving legal frameworks in Eastern Europe. Other studies include Gray, et.al., The Legal Framework for Private Sector Development in a Transitional Economy: The Case of Poland (hereinafter called Polish Legal Framework); Gray, et.al., Romania's Evolving Legal Framework for Private Sector Development (hereinafter called Romanian Legal Framework); and Gray and Ianachkov, Bulgaria's Evolving Legal Framework for Private Sector Development (forthcoming).

<sup>2</sup> The paper does not discuss certain other areas of law that are also important to the private sector, including privatization, banking, taxation, and labor law. Privatization is considered a transitional issue, whereas the paper seeks to address the longer-term legal structure. The other areas of law are omitted due both to space limitations and to likely coverage in other World Bank or external studies.

### Constitutional Law

The constitution of a country sets the most basic rules on the structure and roles of the government and the economic system. On December 23, 1991, Slovenia adopted a new constitution,<sup>3</sup> one year after the public referendum overwhelmingly voted in favor of an independent sovereign Slovenia. This is the culmination of a series of constitutional developments promoting ever-greater dissolution from Yugoslavia.

#### The Historical Setting

In contrast to the United States, with its one constitution in 200 years, constitutions in Eastern Europe change regularly. Post-war Yugoslavia has had 4 constitutions--1946,<sup>4</sup> 1953,<sup>5</sup> 1963,<sup>6</sup> and 1974.<sup>7</sup> The 1946 constitution introduced central planning, while the 1953, 1963, and 1974 constitutions introduced and later revised the concept of worker self-management. Yugoslav constitutions also tend to be long, with extensive

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<sup>3</sup> Ustava Republike Slovenije [Constitution of the Republic of Slovenia (hereinafter "Slovene Constitution")], Uradni list Republike Slovenije [Official Gazette of the Republic of Slovenia (hereinafter "Official Gazette RS")], No 33 (1991), pages 1373-1386.

<sup>4</sup> Ustava Federativne ljudske republike Jugoslavije [Constitution of the Federal Republic of Yugoslavia], Uradni list Federativne ljudske republike Jugoslavije [Official Gazette of the Federal People's Republic of Yugoslavia (hereinafter "Official Gazette FPRY")], No 10 (1946).

<sup>5</sup> Ustavni zakon Federativne ljudske republike Jugoslavije [Constitutional Law of the Federal People's Republic of Yugoslavia], Official Gazette FPRY, No 3 (1953).

<sup>6</sup> Ustava Federativne ljudske republike Jugoslavije [Constitution of the Federal People's Republic of Yugoslavia], Official Gazette FPRY, No 14 (1963), with most recent amendments Uradni list Socialistične federativne republike Jugoslavije [Official Gazette of the Socialist Federal Republic of Yugoslavia (hereinafter "Yugoslav Official Gazette")], No 29 (1971).

<sup>7</sup> Ustava Socialistične federativne republike Jugoslavije [Constitution of the Socialist Federative Republic of Yugoslavia], Yugoslav Official Gazette 9 (1974), with most recent amendments Yugoslav Official Gazette No 70 (1982).

sections on desired goals for the country. The 1974 Yugoslav constitution, for example, has over 400 articles on over 160 pages.<sup>8</sup>

The federalist structure of Yugoslavia gave the Republics extensive powers over the legal frameworks within their jurisdictions, especially under the federal constitution of 1974. In addition to the federal constitution, each republic had its own constitution. Slovenia's most recent socialist constitution dates from 1974, with amendments in 1981, 1989, 1990, and 1991.<sup>9</sup> Federal law was supposed to set the basic legal foundation in any particular area, with specifics regulated by republican law; for example, federal law set the foundations of the tax system, with specific rates and regulations set by the republics. In case of conflict the federal law had priority, but the Republics began to question this priority as tensions developed in the late 1980s.

#### Move toward Independence

The 1990 and 1991 amendments to the Slovene constitution<sup>10</sup> were designed to further reforms toward a market economy and set the stage for the ultimate independence of Slovenia. For example, amendment 91 in March 1990 deleted the word "Socialist" from the Republic's title. Amendment 96 in September 1990 reversed the priority of laws in cases of conflict, stating that articles of the Federal constitution would not apply if not in accord with the Slovene constitution, and that new federal laws, regulations, and acts of federal authorities would be valid in Slovenia only after approval by the Slovene Parliament. Old Yugoslav laws were implicitly still valid unless specifically rejected by Parliament. More than 200 Yugoslav laws implicitly remained in force.

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<sup>8</sup> The U.S. Constitution, in comparison, has 7 articles with 20 sections on 16 pages.

<sup>9</sup> Ustava Socialistične Republike Slovenije [Constitution of the Socialist Republic of Slovenia], Uradni list Socialistične republike Slovenije [Official Gazette of the Socialist Republic of Slovenia] (hereinafter "Official Gazette SRS"), No 6 (1974). Ustavni amandmaji k ustavi SRS [Constitutional Amendments to the Constitution of the Socialist Republic of Slovenia], Official Gazette SRS, No 22 (1981) Amendments I-VII; No 32 (1989) Amendments VIII-LXXXIX; No 8 (1990) Amendments XCI-XCV; Official Gazette RS, No 35 (1990) Amendments XCVI-XCVIII, No 7 (1991) page 282, Amendment XCIX; No 1 (1991), Amendment C. (Upon declaring independence, Slovenia began renumbering the issues of its official gazette from the beginning.)

<sup>10</sup> Supra note 9.

The public referendum was held on December 23, 1990,<sup>11</sup> followed in February 1991 by Parliamentary resolutions<sup>12</sup> that granted Slovenia control over turnover and import taxes, with only a small payment authorized to the center to support the minimal functioning of federal institutions. The resolutions also directed the Slovene government to prepare an anti-inflation program, a proposal for the separation of financial assets and liabilities (including external debt) among federal units, and several policies and laws in the areas of pricing, fiscal and monetary policy, and international economic relations. Amendment 99 in February 1991 then revoked Slovenia's authorization for the Federal government to manage Slovenia's international relations with foreign countries (including all international treaty authority). And on February 20, 1991, the Parliament adopted a resolution proposing the consensual dissolution of Yugoslavia.<sup>13</sup> The resolution called for the independence supported by the December referendum to be realized within 6 months of the plebiscite.

During this same period, the Slovene Parliament and government studied which federal laws should apply and which should not apply in Slovenia. Constitutional Laws of October 1990 and January 1991<sup>14</sup> declared null and void in Slovenia federal legislation in many areas, including (in the economic area) all or parts of laws on cooperatives, the tax system, economic planning, associated labor (with regard to worker self-management), internal trade, nationalization (the 1946 law), pension and social security, social capital transformation, ownership relations, labor relations, and financial management. On the other hand, changes in numerous federal laws made after October 1990 were accepted by decrees of the Slovene Parliament<sup>15</sup> as binding in Slovenia (at least temporarily), including changes in the enterprise, accounting, bankruptcy, banking, and insurance laws.

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<sup>11</sup> Zakon o plebiscitu o samostojnosti in neodvisnosti Republike Slovenije [Law on Plebiscite on Self-governing and Independence of the Republic of Slovenia], Official Gazette RS, No 44 (1990), pages 2033-2035.

<sup>12</sup> Sklepi [Resolutions], Official Gazette RS, No 3 (1991), page 137.

<sup>13</sup> Resolucija o predlogu za sporazumno razdružitev SFRJ [Resolution About a Proposal for Consensual Disunion of the SFRY], Official Gazette RS, No 7 (1991), page 283.

<sup>14</sup> Ustavni zakon za izvedbo ustavnega amandmaja XCVI k ustavi Republike Slovenije [Constitutional Law for Realization of Constitutional Amendment XCVI to the Constitution of the Republic of Slovenia], Official Gazette RS, No 37 (1990) and No 4 (1991).

<sup>15</sup> Odlok [Decree], Official Gazette RS, No 42 (1990) page 2042; No 44 (1990) page 2108; No 44 (1990) page 2109; No 44 (1990) page 2110; No 48 (1990) page 2311; No 48 (1990), page 2312; No 4 (1991) page 192; No 4 (1991) page 193; No 5 (1991) page 229; No 7 (1991) page 314.

Finally, on June 25, 1991, Slovenia proclaimed its independence with three documents--the Basic Constitutional Document on Sovereignty and Independence of the Republic of Slovenia, the Constitutional Law for its realization, and the Declaration on Independence.<sup>16</sup> These documents were designed as the final step toward independence, transferring all remaining powers and duties from federal to Slovene institutions and asserting full control over borders and diplomatic relations and over domestic economic policies. Numerous new (or renamed) institutions opened on that day, including the Bank of Slovenia; the Customs, Air Traffic, and Telecommunications Administrations; the Office for Standardization and Measurement; and the Patent Office. A package of new "laws of independence" was also adopted, including laws on citizenship, foreign affairs, customs, foreign exchange, the central bank, banking, bank restructuring, and prices.<sup>17</sup> And amendment 100<sup>18</sup> to the existing Slovene constitution established the coat of arms and the flag of the Republic of Slovenia.

The federal government reacted negatively and forcefully to these acts of independence, and a "7-day war" erupted that led to about 70 casualties. In early July the European Community brokered a 3-month moratorium on further acts of both dissolution and armed aggression. When the 3-month moratorium ended in early October, Slovenia introduced its own currency, the tolar. And on December 23th, it adopted a new constitution.

#### The New Constitution<sup>19</sup>

Slovenia's new Constitution consists of 174 articles organized in a preamble and 10 chapters:

##### I. General Provisions (13 articles)

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<sup>16</sup> Temeljna ustavna listina o samostojnosti in neodvisnosti Republike Slovenije [Basic Constitutional Document on Sovereignty and Independence of the Republic of Slovenia], Ustavni zakon [Constitutional Law], Deklaracija ob neodvisnosti [Declaration on Independence], Official Gazette RS, No 1 (1991), June 1991. (Upon declaring independence, Slovenia began renumbering the issues of its official gazette from the beginning.)

<sup>17</sup> Zakon o državljanstvu republike Slovenije [Law on Citizenship of the Republic of Slovenia], Zakon o tujcih [Law on Foreigners], Zakon o potnih listinah državljanov Republike Slovenije [Law on Passports of the Citizens of the Republic of Slovenia], Zakon o nadzoru državne meje [Law on Control of State Border], Zakon o zunanjih zadevah [Law on Foreign Affairs], Zakon o carinski službi [Law on Custom Services], Zakon o kreditnih poslih s tujino [Law on External Credit Relations], Zakon o deviznem poslovanju [Law on Foreign Exchange], Zakon o Banki Slovenije [Law on Bank of Slovenia], Zakon o bankah in hranilnicah [Law on Banks and Savings institutions], Zakon o cenah [Law on Prices], all in Official Gazette RS, No 1 (1991) pages 6-71.

<sup>18</sup> Official Gazette RS, No 1 (1991), page 1.

<sup>19</sup> Supra note 3.



- II. Human Rights and Basic Liberties (52)
- III. Economic and Social Relations (14)
- IV. State System (58)
- V. Local Government (8)
- VI. Public Finance (7)
- VII. Constitutionality and Legality (7)
- VIII. Constitutional Court (8)
- IX. Procedures for Changing Constitution (4)
- X. Provisional and Final Provisions (3)

Although most of the constitution's provisions are non-economic in nature, certain provisions are designed to create and protect individual economic rights in a private market economy. For example, chapter II contains explicit protection of private property (Article 33), freedom of occupation (Article 49), free primary education (Article 57), and protection of copyright (Article 60). Chapter III stresses the economic importance of ownership rights (Article 67), but forbids foreign ownership of land, except if inherited on principle of reciprocity (article 68). This chapter also promises freedom of entrepreneurship (Article 74) and forbids restrictions to competition and unfair competition (Article 74). It requires the state to create conditions for employment (Article 66) and guarantees the right to strike (Article 77) and the right of citizens to appropriate housing (Article 78). The chapter calls for special protection of land, including the protection of agricultural land (Article 71).

It is interesting to note that the draft article giving workers the right to participate in economic decision making was omitted from the final proposal. After having the most extensive worker participation of any country in the world, the pendulum has swung back in the opposite direction, and the idea is now virtually abandoned in Slovenia. Worker management is, however, still widespread in state enterprises as a vestige of the past.

Effective yet limited government is essential for the private sector to grow and prosper. Chapter IV, on state structure, tries to insure a responsible state apparatus by setting up a system of checks and balances similar to that in other parliamentary systems in Europe, including those provided in the new constitutions of other CEE countries. It establishes a bicameral parliament, with a main chamber--the State Assembly--and a second, less important chamber--the State Council. This was a compromise solution between the opposition parties, which wanted a Parliament with two equal chambers (one weighted in favor of regional interests), and the ruling coalition, which favored a one-chamber Parliament. The State Assembly has 90 members (Articles 80-95) elected for 4 years.<sup>20</sup> It has the sole power to adopt laws. The State Council, included as a compromise to protect regional interests and occupational groupings, has 40 members elected to 5-year terms

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<sup>20</sup> As in most CEE countries, the method of election is not governed by the Constitution but by an Election Law. Proportional representation is called for under the old election law. A new election law, which could change the system of representation, is under preparation for the elections to be held later in 1992.

by various interest groups (Articles 96-101). It has the power to propose legislation, to advise the State Assembly on proposed legislation, and to block the adoption of a proposed law and return it to for renewed discussion (Article 97). If the proposed law is then reconsidered and readopted by a majority of all delegates in the State Assembly, it becomes law and cannot again be blocked (Article 91). This chapter also gives lawmaking authority to the public referendum, which may be called by either chamber of parliament or by petition from at least 40,000 voters (Article 90).

The power of parliament is counterbalanced by the other branches of the state--the president, the prime minister, and the judiciary. The president is elected directly by the public for a 5-year terms (with a maximum of two consecutive terms) (Article 103). The president is commander-in-chief of the army (Article 102) and proposes a candidate for prime minister to the State Assembly (Article 111). If approved by Parliament, the prime minister then proposes ministers, who are scrutinized by parliamentary commissions (Article 112). The judiciary is composed of three levels of courts--the basic courts, the higher courts, and the Supreme Court (Articles 126, 127). Military and other extraordinary courts are prohibited in peacetime (Article 126); the Court of Associated Labor, formed under the socialist regime to handle labor disputes, still exists but will soon be phased out. Judges are proposed by the Court Council and appointed for life terms by the State Assembly (Articles 128, 130). Unlike some other formerly-socialist countries, Slovenia has maintained the institution of lay judges (Article 128), who join professional judges on panels to decide cases and impose appropriate sanctions.<sup>21</sup>

Chapter 8 provides for a constitutional court, another source of checks and balances in the system.<sup>22</sup> Its primary role is to review the constitutionality of laws, regulations, and individual acts of the state or political parties (Article 160). It is also empowered to review whether laws conform to international treaties and to decide disputes regarding the competency of the various branches of the state or local communities (Article 160). Any person with a "legal interest" (presumably a case in controversy) may request review of a constitutional complaint (Article 162). If the court finds a law to be unconstitutional, it is automatically annulled (Article 161). This model of a specialized constitutional court, similar to that in

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<sup>21</sup> Lay judges bear some resemblance to common-law jurors in that they are intended to bring a layperson's perspectives and judgments into the legal arena. However, their role is not distinguished from that of the professional judge as in common law systems, where jurors decide facts (including guilt or innocence) and judges assure that the proceedings are in accordance with the law. In the continental tradition, lay judges and professional judges together decide on the law, the facts, and the appropriate penalties. The new Code of Civil Procedure allows their exclusion in certain civil cases (particularly commercial cases) if both sides agree.

<sup>22</sup> Although not officially part of the judiciary, the Court is composed of 9 recognized legal experts (Article 163) selected for one-time 9-year terms (Article 165) by the State Assembly on proposal by the President. All cases are decided by majority vote of at least 5 members (Article 162).

other reforming socialist countries,<sup>23</sup> has both pros and cons. On the positive side, it provides an explicit forum for checking the constitutionality of acts of the state. On the negative side, it takes away some of the power of the judiciary itself, which might otherwise develop into a constitutional watchdog much as it has in the United States.

The remaining chapters of the Constitution deal generally with local government (Articles 138-145), public finance (Articles 146-152),<sup>24</sup> constitutionality and legality (Articles 153-159), and amendment (Articles 168-171) and transition procedures (Articles 172-174). A constitutional law, adopted on the same day as the Constitution,<sup>25</sup> provides that existing laws remain valid but should be harmonized with the constitution by the end of 1993 (Article 1). Numerous issues that remain undecided in the constitution are to be addressed in later legislation.<sup>26</sup>

### Rights to Real Property

As in most of Central and Eastern Europe, real property rights are in a state of flux in Slovenia as it moves to reverse decades of socialist and labor-management influence. Private ownership of land and housing and privately-owned small businesses have long existed in Slovenia, albeit on a limited basis, and thus the concept is not as radical as in some of the more traditional former socialist states. Furthermore, basic principles of property law and property rights and the system of land registration (with accompanying records)<sup>27</sup> inherited from the Austro-Hungarian empire remain in

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<sup>23</sup> Poland and Romania, for example, have adopted a similar model, although the decisions of their constitutional courts can be overturned by a two-thirds vote of Parliament.

<sup>24</sup> As an additional check upon the state, chapter 6 provides for a "court of accounts" to inspect public finances (Articles 150-151) and for a central bank responsible to the State Chamber and thus independent from the executive branch (Article 152).

<sup>25</sup> Ustavni zakon za izvedbo ustave Republike Slovenije [Constitutional Law for Realization of Constitution of the Republic of Slovenia], Official Gazette RS, No 33 (1991), pages 1386-1387.

<sup>26</sup> Two reasons help to explain why numerous issues remained undecided when the Constitution was adopted. First, Parliament had promised and was under time pressure to adopt it one year after the national referendum on independence. Second, the ruling coalition of parties in Parliament only held 53 percent of the votes, while a two-thirds majority was needed to adopt the Constitution. Therefore, numerous controversial issues had to be omitted for the document to be acceptable to opposing factions.

<sup>27</sup> The Austro-Hungarian landbook law from 1871 and the land register (cadastre) law from the 1920s form the basis of the land registration system that exists today. The system of social property of the last 40 years,

place. However, the massive efforts now beginning to return previously nationalized real property to former owners is likely to create great upheaval in property markets and uncertainty in real property rights for some time to come.

### The Historical Legacy

A large part of Yugoslavia--including Slovenia, Croatia, Bosnia and Herzegovina--was part of the Austro-Hungarian empire before the creation of Yugoslavia in 1918. After 1918 Austrian law continued to heavily influence lawmaking in the new country, and the Austrian General Citizens Code ("Allgemeines Buergerliches Gesetzbuch") of 1811 (as later amended)<sup>28</sup> became the basis for property and contract relations among private natural persons and legal entities, whether in private or business activity.<sup>29</sup> It was translated and essentially adopted as general law except in a few fields (such as bankruptcy) where specific Yugoslav statutes held precedence.

During the socialist period after World War II until 1990, three forms of property were legally recognized in Yugoslavia. The first, "social" property,<sup>30</sup> was owned in principle by all the people<sup>31</sup> and was managed under the uniquely-Yugoslav variant of socialism, the system of worker self-management.<sup>32</sup> Most of the economy, including 90 percent of all fixed

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however, did significant damage to land records. Many transfers of social property and most transfers of private apartments were not registered. Prewar private owners of land and buildings often remain on the books, thus providing a basis for implementing the denationalization law discussed below.

<sup>28</sup> Allgemeines Buergerliches Gesetzbuch [General Civil Code], Oesterreische I.G.S. No 946 (1811).

<sup>29</sup> The Austrian Code was very broad, covering not only property and contract principles, but also family law, inheritance, and (through later amendment) bankruptcy, taxation, and collateral.

<sup>30</sup> Yugoslav Constitution, supra note 7.

<sup>31</sup> Social property was in theory everyone's property but was in fact no one's property, in that no private individual could transfer rights to the property. In practice "usufruct" (or use) rights were allocated to firms at low cost. This administrative allocation resulted in arbitrary and unequal distribution in access to social capital among workers.

<sup>32</sup> Most of the principles and rules regarding forms of property and the system of worker self-management of social property were contained in the first law on self-management adopted in 1950 (Temeljni zakon o gospodarjenju z drzavnimi gospodarskimi podjetji in visjimi gospodarskimi zdruzenji po delovnih kolektivih [Basic Law on Management with State economic Enterprises and Higher Economic Associations by Working Collectives], Yugoslav Official Gazette, No 43 (1950)), the constitutions of 1953, 1963, and 1974 (supra notes 4-7), and the Law on Associated Labor of 1976 (Zakon o zdruzenem delu,

capital, fell in this category. The second, cooperative property, was recognized but not well-developed or widely used in Yugoslavia as in some of its socialist neighbors.<sup>33</sup> The third, private property, was restricted to personal ownership<sup>34</sup> of real property (with a general maximum of one medium-sized house or 2-3 apartments per person, not including vacation homes), small businesses (primarily individual service providers such as lawyers or craftsmen), and small private farms (with a maximum size of 10 hectares, increased to 30 hectares in 1988<sup>35</sup>). Unlike other socialist economies (except Poland), most farming in Slovenia was done on a small scale, and 85 percent of all land was privately owned.

After World War II, a special 1946 decree prolonged the validity of any prewar legislation not clearly in opposition to socialist principles until it could be replaced by new legislation. The private civil law adapted from the Austrian civil code remained essentially unchanged, although much of it fell into disuse. It continued to apply only in the small area carved out for private property and private transactions. It took over 30 years for the country to adopt new legislation in the two main areas of private civil law--property and obligations. In the property area, the Law on Foundations of Property Relations was adopted in 1980.<sup>36</sup> Even this law, however, retained many of the principles of the Austrian predecessor, and incorporated relatively few principles unique to socialism and worker self-management. Amendments in 1990<sup>37</sup> removed these few socialist principles from the law, returning it more or less to its original foundations from the Austrian empire.

#### Recent Slovene Initiatives

The Law on the Foundations of Property Relations remains valid in Slovenia, as do numerous special laws in the area of property rights that were adopted in Yugoslavia in recent years and not explicitly abrogated by Slovene laws. At some point the general law will be replaced by specific Slovene legislation. Already specific Slovene laws have been adopted in the areas of

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Yugoslav Official Gazette, No 53, (1976), with most recent amendment, Yugoslav Official Gazette, 40 (1989)).

<sup>33</sup> Yugoslav Constitution, supra note 7, Articles 62, 65.

<sup>34</sup> Yugoslav Constitution, supra note 7, Article 78.

<sup>35</sup> Amendment 23 to Yugoslav Constitution, supra note 7.

<sup>36</sup> Zakon o temeljih lastninskopravnih razmerij [Law on Foundations of Property Relations], Yugoslav Official Gazette, No 6 (1980).

<sup>37</sup> Yugoslav Official Gazette, No 36 (1990), page 617.

denationalization and housing (both in November 1991),<sup>38</sup> and proposed laws on land and forestry<sup>39</sup> and on cooperatives are being considered by Parliament. And, as noted earlier, the newly-adopted constitution guarantees private property rights and abolishes any limits on property ownership (Article 33). Thus, rights of Slovene citizens to own and use real property in private business appear to have a solid legal basis.

These rights do not extend to foreigners, however. The new Slovene constitution specifically restricts foreigners from owning land in Slovenia, either for business purposes or as a residence, except in the special case of inheritance when reciprocity is provided by the home country of the heir (Article 68). Although foreign ownership of buildings is not strictly illegal,<sup>40</sup> the right of foreigners to own or obtain mortgages in any real property was temporarily suspended in October 1991<sup>41</sup> until specific Slovene legislation covering the property rights of foreigners is adopted.<sup>42</sup>

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<sup>38</sup> Zakon o denacionalizaciji [Law on Denationalization], Official Gazette RS, No 27 (1991), pages 1094-1101; Stanovanjski zakon [Housing Law], Official Gazette RS, No 18 (1991) pages 590-603.

<sup>39</sup> The draft law on lands and forestry deals with the 15 percent of agricultural land and two-thirds of forests now under social ownership. Under the law, these lands would first become the property of the state and then either be returned to previous private owners (pursuant to the denationalization law) or kept within special state funds under state ownership and management (with the possibility of lease to private parties). The most recent draft was rejected in Parliament because of a disagreement over which level of government--central or local--should own the funds.

<sup>40</sup> In its original 1980 version, Chapter 6 of the Yugoslav Law on the Foundations of Property Relations prohibited foreigners from owning any real property in Yugoslavia, except in the case of inheritance if reciprocal rights were granted by the home country of the heir. Renting was permitted under 5-30 year leases. Under 1990 amendments to this law, foreigners could become owners of commercial building space if allowed by specific federal and republican laws (Yugoslav Official Gazette, No 36, 1990, Article 82a). Some federal laws did then grant broader property rights to foreigners. For example, amendments to the Law on Exchange and Disposition of the Social Capital (Zakon o prometu in razpolaganju z družbenim kapitalom, Yugoslav Official Gazette, No 84 (1990), Article 4) granted the right of 99-year use, or "usufruct." Slovenia has not specifically abrogated this Yugoslav legislation.

<sup>41</sup> Ustavni zakon za izvedbo ustavnega amandmaja XCVI k ustavi Republike Slovenije [Constitutional Law for Realization of the Constitutional Amendment XCVI to Constitution of the Republic of Slovenia], Official Gazette RS, No 37 (1990), Article 8b.

<sup>42</sup> This temporary moratorium on the acquisition of property rights by foreigners not only hampers foreign companies wishing to buy property to invest in Slovenia, but also makes it impossible for foreign banks to take

Reprivatization. The Slovenian reprivatization initiative, called "denationalization," is among the most radical to date of all similar initiatives in reforming socialist countries. Although the Slovene law on privatization of social enterprises is entwined in political dispute within Parliament, a Law on Denationalization was adopted in November 1991.<sup>43</sup> This law intends to "reprivatize" not only the land previously nationalized under the agrarian reform statutes of 1946, 1948 and 1953,<sup>44</sup> but also the property and shares of businesses nationalized in 1946 and 1948,<sup>45</sup> buildings nationalized in 1958,<sup>46</sup> and property confiscated in 1944 and 1946 from citizens accused of collaborating with the Germans.<sup>47</sup> It was estimated during preparation of the law that some 4 billion Deutsch Mark (or US\$2.5 billion) worth of social property would be subject to denationalization--about 10 percent of all social property or 7 percent of all property in Slovenia. Natural persons who were Yugoslav citizens at the time of nationalization (or their close relatives or heirs) are eligible, as are religious organizations (Articles 5, 9-13). Legal entities other than religious organizations are not eligible (Article 14). If possible, the property is to be returned in-kind (Article 2). Otherwise, compensation is to be provided in substitute

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security interests in real property. New legislation on property rights for foreigners is now under preparation. Although the Constitution prohibits foreigners from owning land, the new legislation is expected to permit foreigners to own buildings and hold mortgages on all types of real estate.

<sup>43</sup> Zakon o denacionalizaciji [Law on Denationalization], Official Gazette RS, No 27 (1991).

<sup>44</sup> The 1948 statute nationalized holdings over 25 hectares, and the 1953 statute nationalized holdings over 10 hectares. Zakon o agrarni reformi in kolonizaciji [Law on Agrarian Reform and Colonization], Official Gazette FPRY, No 64 (1945), 24 (1945), 101 (1947), 105 (1948), 21 (1956), 55 (1957), 10 (1965); and Uradni list Ljudske republike Slovenije [Official Gazette of People's Republic of Slovenia], No 62 (1945), 30 (1946), 10 (1948), 17 (1958), 17 (1959), 18 (1961), 22 (1965); Zakon o kmetijskem zemljiškem skladu splošnega ljudskega premoženja in o dodeljevanju zemlje kmetijskim organizacijam [Law on Agricultural Land Fund and on Allocation of Land to the Agricultural Organizations], Official Gazette FPRY, No 23 (1953).

<sup>45</sup> Zakon o nacionalizaciji zasebnih gospodarskih podjetij [Law on Nationalization of Private Economic Enterprises], Official Gazette FPRY, No 98 (1946) and No 35 (1948).

<sup>46</sup> Zakon o nacionalizaciji najemnih zgradb in gradbenih zemljišč [Law on Nationalization of Rented Buildings and Building Land], Official Gazette FPRY, No 52 (1958).

<sup>47</sup> Zakon o konfiskaciji premoženja in o izvrševanju konfiskacije [Law on Confiscation of Property and on Realization of Confiscation], Uradni list Demokratične federativne Jugoslavije [Official Gazette of the Democratic Federation of Yugoslavia], No 2 (1945), No 40 (1945); Official Gazette FPRY, No 61 (1946), No 63 (1946), No 64 (1946), No 74 (1946).

property, securities, or money (Article 2). Eligible individuals have 18 months to submit a request (Article 64).<sup>48</sup>

Although it represents a clear statement of radical intent by the Parliament, the reprivatization law will not necessarily result in an efficient allocation of property rights. Furthermore, it is creating tremendous uncertainty due to the law's long period for claims. The process could take several years, especially given the limited capacity of the judicial system for processing claims and resolving disputes. Insecurity of property rights during that period threatens to seriously impede the investment that is so badly needed for economic recovery and growth. Finally, the law is likely to exacerbate political tensions and uncertainty if it leads to large redistributions of wealth away from workers toward pre-war owners of property and their heirs (whether resident in Slovenia or abroad).

Housing. In the same month that the denationalization law was passed, the Slovene parliament adopted a housing law that provides, among other things,<sup>49</sup> for extensive privatization of socially-owned apartments. About 50 percent of these 229,000 apartments in Slovenia are expected to be sold within 2 years to current tenants under this law.<sup>50</sup> Because of administratively-determined prices and official discounts offered to purchasers,<sup>51</sup> sales prices are low. For example, a one-bedroom apartment (55 square meters) in the capital city, Ljubljana, can cost less than \$8,000 at current exchange rates.<sup>52</sup>

While privatization of state-built housing is relatively easy because existing tenants have clear priority rights (Article 18), privatization of previously nationalized housing is much more difficult because of the

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<sup>48</sup> This contrasts with the shorter 3-month period provided for restitution requests under the proposed enterprise privatization law [?].

<sup>49</sup> The housing law also contains numerous other provisions dealing with landlord-tenant relations, lease contracts, and the management of multi-unit buildings.

<sup>50</sup> Yugoslav citizens have always been allowed to own private housing, and thus about 70 percent of all apartments and houses in Slovenia were already in private hands before the housing law was adopted.

<sup>51</sup> A 60 percent discount is given from the administratively determined price if the purchaser pays in full within 60 days (Article 119). Alternatively, the purchaser can pay 10 percent at the time of sale and the rest (with at least a 30 percent discount) over a period up to 20 years (with reasonable interest rates and values defined in domestic currency but indexed to foreign currency) (Article 117). A portion of the sale proceeds is earmarked for state and local housing funds, to be used to finance housing loans in the future (Article 130).

<sup>52</sup> For comparison, average annual salaries are approximately \$2500, and average annual per capita income is in the range of \$4000-\$4500 [cite?].



competing interests of current tenants<sup>53</sup> and former owners. Because of strong support for tenants' rights, the strong push for reprivatization (or denationalization) throughout Central and Eastern Europe is most difficult to apply in the area of housing. In Slovenia the denationalization law takes precedence over the housing law. Previous owners can choose between compensation from a restitution fund or return of the property in kind. If they receive the apartment in kind, holders of the housing right are entitled to receive 30% of the value of the apartment plus a housing credit of the same amount (Article 125) if they vacate within 2 years.<sup>54</sup>

### Controls on Use of Real Property

Slovenia, like the other formerly-socialist economies of Central and Eastern Europe, needs to rethink the many controls on the use of real property that it has inherited from the socialist period. For example, like its neighbors, Slovenia has long protected agricultural land from "misuse" through strict zoning regulations.<sup>55</sup> A permit is still required to convert agricultural land to nonagricultural uses; not only is permission difficult to obtain, but such conversion, if administratively approved, is further discouraged through high taxation.<sup>56</sup> As the market in urban and rural land develops, relative prices should become more of a gauge of the most productive use of scarce land and should over time replace many administrative controls.<sup>57</sup>

Controls on the use of urban land also need rethinking. Most urban construction in CEE countries during the socialist period tended to be based on industrial large-panel construction methods combined with rigid and static

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<sup>53</sup> The word tenant may be a bit misleading, because "housing rights" to state- or enterprise-owned housing under the socialist system were more extensive than renters' rights in capitalist systems. For example, those with housing rights had life-time rights of occupation, could transfer those rights easily to relatives, and paid rent far below comparable market value (as measured by the "gray" rental market in some cities).

<sup>54</sup> Tenants cannot be forced to vacate, although new owners will have the right to renegotiate rents within certain limits.

<sup>55</sup> Zakon o varstvu kmetijskih zemljišč pred spreminjanjem namembnosti [Law on Protection of Agriculture Land Against Changing Use], Official Gazette SRS, No 44 (1982).

<sup>56</sup> For example, the tax charged to convert agricultural land to "building" land can be up to \$8000 for a one-house plot.

<sup>57</sup> Administrative intervention may be justified on economic grounds if private market prices do not fully reflect social costs. For example, governments sometimes set strict zoning limits to protect fragile yet socially-valuable ecosystems from individual encroachment, or to preserve quaint rural settings--and thus the widespread benefits of tourism--from incompatible private development.

land-use planning. Because no market in land developed to signal scarcity value, clusters of high-rise apartments buildings would typically be built outside the city center, often on prime farm land, leading to inefficient use of land and high transportation and infrastructure costs. Although Slovenia suffered less from this syndrome than more highly-centralized socialist systems, its construction and zoning rules<sup>58</sup> had some of the same shortcomings. Furthermore, existing Slovene construction regulations require a long list of required permits that are likely to be overly-restrictive, ill-designed, or redundant in a private market economy. If the past is an indicator, they are also likely to impose an expensive and time-consuming burden that will further hamper the emergence of a private construction sector.<sup>59</sup>

### Rights to Intellectual Property

Until recently there was little need for intellectual property protection in Slovenia or other socialist countries. Not only was there less incentive for invention within the relatively rigid and static socially-owned enterprises, but the basic concept of individually-owned intellectual property was anathema to the socialist system. Intellectual property, like other industrial property, was owned by enterprises rather than individuals and ultimately under the control and discretion of the state. Foreign intellectual property was nominally protected under existing intellectual property laws (as discussed below), but the protection was weak and inconsistent. Without extensive foreign involvement in the economy, however, intellectual property protection was not an important issue. It is becoming so only now, as foreign investment is more eagerly sought and as the domestic private sector begins to grow.

### Patents and Trademarks

After declaring independence, Slovenia recognized all federal Yugoslav laws in the field of intellectual property as applicable in the new republic. These include the law on the protection of industrial property of 1981 (covering patents and trademarks)<sup>60</sup>, the copyright law of 1978 (as amended),<sup>61</sup> and the statute setting up the patent office.<sup>62</sup> Slovenia is now

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<sup>58</sup> Zakon o stavbnih zemljiščih [Law on Building Land], Official Gazette SRS, No 18 (1984), most recent amendment, Official Gazette SRS, No 33 (1989).

<sup>59</sup> Obtaining a permit for building construction typically takes at least 1 year.

<sup>60</sup> Zakon o varstvu izumov, tehničnih izboljšav in znakov razlikovanja [Law on Protection of Inventions, Technical improvements and Signs of Differentiation], Yugoslav Official Gazette, No 34 (1981), most recent amendment Yugoslav Official Gazette, No 20 (1990).

<sup>61</sup> Zakon o avtorski pravici [Copyright Law], Yugoslav Official Gazette, No 19 (1978), most recent amendment Yugoslav Official Gazette, No 21 (1990).

moving to update and replace these laws with legislation that is more in line with market-based international norms.<sup>63</sup> On the institutional side, in June 1991 it established the Agency for the Protection of Industrial Property,<sup>64</sup> which is supposed to assume the functions previously carried out by the analogous Yugoslav federal agency. Registrations previously made in the federal agency remain valid in Slovenia.

The applicable law for patents and trademarks in Slovenia until March 1992 was the Yugoslav industrial property law of 1981--the Law on the Protection of Inventions, Technical Improvements and Distinctive Signs.<sup>65</sup> When adopted, this law was a step backward from its predecessor in terms of the legal protections it provided. For example, patents and trademarks were protected for only 7 years, with the possibility of extension for 7 more (Article 51), and many items (such as pharmaceuticals) were excluded from protection altogether (Articles 20, 23). Internal and external pressure led to amendments in 1990<sup>66</sup> that improved patent and trademark protection, and Yugoslavia simultaneously moved to expand its participation in relevant international conventions.

Slovenia passed a new patent law in March 1992.<sup>67</sup> The new law is similar in structure to the amended federal law of 1990 but broader in coverage.<sup>68</sup> It provides patent and trademark protection closely in line with modern international standards and existing international conventions. The period of patent protection is extended to 20 years (Article 37), the first 10 upon request without examination as to novelty or applicability<sup>69</sup> and the

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<sup>62</sup> Pravilnik o patentnih uradih [Statute on Patent Offices], Yugoslav Official Gazette, No 25 (1963).

<sup>63</sup> Much of the information on the new legal framework is taken from Bojan Pretnar, "Protection of Intellectual Property in Slovenia," unpublished manuscript, 1991.

<sup>64</sup> Zakon o organizaciji in delovnem področju republiške uprave [Law on Organization and Working Field of the Administration of Republic], Official Gazette RS, No 27 (1991).

<sup>65</sup> Supra note 60.

<sup>66</sup> Yugoslav Official Gazette, No 9 (1990) and No 20 (1990).

<sup>67</sup> Zakon o varstvu industrijske lastnine [Law on Protection of Industrial Property], Official Gazette RS, No 13 (1992), pages 816-826.

<sup>68</sup> For example, the law covers plant and animal varieties and all drugs and chemical compounds (Article 28). However, in the case of drugs applications can be filed only after December 31, 1992 (Article 121).

<sup>69</sup> The application is examined only to be sure that it meets formal requirements and that exclusion of other users is feasible (Article 54). Although the patent office does not go further, any person may oppose the

second 10 upon submission of written proof of testing (the so-called "Document of Evidence") by an approved foreign testing institution (as specified in the Patent Cooperation Treaty) (Article 71).<sup>70</sup> Compulsory licences--pursuant to which the government can force the issuance of a license to a third party to produce a patented product if the patent holder does not produce it--continue to be a feature of the law (Articles 112-117).<sup>71</sup> Because of the complexity of the issues, only one court (in Ljubljana) is likely to be authorized to handle cases arising from this law.

### Copyright

The Yugoslav Copyright Law of 1978, as amended in 1986 and 1990,<sup>72</sup> remains valid in Slovenia. The original law was heavily influenced by the self-management philosophy of the time and was a step backward in legal protection from the previous law of 1968.<sup>73</sup> The 1990 amendments were more extensive. Among other things, they eliminated the self-management rhetoric in the original law and introduced copyright protection for computer programs.<sup>74</sup> Copyright protection under the current law lasts during author's life and for 50 years after his death (Article 82 of the Copyright Law); in this and most other ways it fully meets international norms for protection. Although the Slovenian government has announced its intention to adopt a new copyright law in the future, the need is not urgent and preparation has not yet begun.

Needs are greater on the institutional side. The previous Yugoslav copyright agency consisted of a main office in Belgrade and regional offices in the capital of each republic. In mid-1991, the Ljubljana office became the Slovenian Copyright Agency, without change to its general functions or staffing. As in the case of patents and trademarks, institutional development

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patent by filing a suit in court. A patentee may sue a third party for patent infringement only if he submits a Document of Evidence (as referred to below) to the patent office (Article 86).

<sup>70</sup> Relying on officially-approved foreign testing institutions is not unusual for a small country that cannot afford to carry out its own examination to prove the applicant is the inventor and to assess the novelty and applicability of the invention.

<sup>71</sup> Although not allowed under U.S. law, compulsory licences are common throughout the world and are permitted under the Paris Convention.

<sup>72</sup> Zakon o avtorski pravici [Copyright Law], Yugoslav Official Gazette No 19 (1978), pages 645-655, with most recent amendment Yugoslav Official Gazette No 21 (1990), pages 845-848.

<sup>73</sup> Zakon o avtorski pravici [Copyright Law], Yugoslav Official Gazette No 30 (1968).

<sup>74</sup> The patent office also hopes to introduce a new Law on the Protection of Semiconductor Topographies in 1992.

is critical to the development of a reliable legal framework for copyright protection. Additional technical assistance, training, and equipment in both the Industrial Property and the Copyright Agencies could help those agencies meet the growing demand from foreign investors and domestic private entrepreneurs for viable intellectual property protection.

### International Conventions

Yugoslavia has ratified the major conventions in the field of intellectual property, including the 1883 Paris Convention for the Protection of Industrial Property (1967 Stockholm text),<sup>75</sup> the 1891 Madrid Agreement for the International Registration of Trademarks (1967 Stockholm text), and the Berne Copyright Convention (Paris text of 1971). Slovenia has indicated its intention to be a signatory to these conventions in its own right. However, whether Slovenia is assumed to inherit Yugoslavia's treaty rights and obligations or must begin the accession process anew is still an open question.<sup>77</sup>

### Company Law

#### Background

For some 30 years prior to 1989, Yugoslav companies operated under the unique Yugoslav concepts of social ownership of the means of production and worker self-management. These principles, enshrined in successive constitutions and laid out in greatest detail in the Law on Associated Labor of 1976,<sup>78</sup> gave no one true ownership rights over enterprise assets but gave ultimate managerial power (at least formally) to workers' councils elected by the workers' assembly (Articles 490-495). Separate enterprises with legal personality--called "basic organizations of associated labor" or "BOALs"--could be formed by any group of workers, whether or not these enterprises constituted logically separate economic entities. The only three conditions

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<sup>75</sup> Yugoslav Official Gazette, No 5 (1974), most recent amendment Yugoslav Official Gazette, No 7 (1986).

<sup>76</sup> Yugoslav Official Gazette, No 14 (1975). Several more recent conventions, such as the Patent Cooperation Treaty and the Hague Agreement for the Protection of Industrial Property, are in the process of ratification.

<sup>77</sup> The International Court of Justice in the Hague recently ruled that Yugoslavia's disintegration is a case of succession, not secession. This would imply that Slovenia would automatically be considered signatories to any conventions previously ratified by Yugoslavia, including those on intellectual property, and would--together with other successor states--be bound by previous Yugoslav obligations and entitled to all its rights.

<sup>78</sup> Zakon o združenem delu [Law on Associated labor], Yugoslav Official Gazette, No 53 (1976), most recent amendment Yugoslav Official Gazette, No 40 (1990).

required for a BOAL to be formed were (1) that it be a working unit, (2) that the value of its product could be separately calculated, and (3) that self-management rights could be exercised (Article 320). Thus the industrial economy was carved up into a multitude of small self-managed units, often themselves departments of larger operating entities. The government used fairly ad hoc taxes and subsidies to redistribute income among these units, thus keeping the weaker ones afloat and preserving employment. Incentives in this extreme version of worker democracy under "soft budget constraints" ran counter to efficiency and growth, as workers tended to be more concerned with increasing wages and benefits--and the government with preserving employment--than with preserving and enhancing the productive capital stock of the firm.<sup>79</sup>

The Yugoslav Enterprise Law adopted in 1988,<sup>80</sup> which took effect January 1, 1989, represented a radical departure from the past. It introduced modern company forms into Yugoslavia and provided equal treatment for privately-owned and socially-owned firms. Together with the new Foreign Investment Law<sup>81</sup> that took effect the same day, it also provided greatly expanded avenues for foreign investment and similar treatment with domestic investment. It repealed most of the Law on Associated Labor (except Article 196 dealing with labor relations) and called for the BOALs to be consolidated in larger units and reorganized into stock companies (Article 192). It also downgraded the powers of workers' councils (Article 131), and 1990 amendments to the law did away with the requirement of obligatory establishment of workers' councils in joint stock and limited liability companies.<sup>82</sup>

The Yugoslav Enterprise Law is still the currently applicable law in Slovenia,<sup>83</sup> although lawmakers have prepared a draft of a new law that is

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<sup>79</sup> Vodopivec (1990).

<sup>80</sup> Zakon o podjetjih [Company Law], Yugoslav Official Gazette, No 77 (1988), most recent amendment Yugoslav Official Gazette, No 61 (1990).

<sup>81</sup> Zakon o tujih vlaganjih [Law on Foreign Investment], Yugoslav Official Gazette, No 77 (1988).

<sup>82</sup> Yugoslav Official Gazette, No 46 (1990), Article 131.

<sup>83</sup> The August 1990 amendments to the Law on Transfer and Use of the Social Capital [Zakon o prometu in razpolaganju z družbenim kapitalom, Yugoslav Official Gazette, No 46 (1990)] dealing with the distribution of shares to workers were applicable only by special permission of the Agency for Privatization [Constitutional Law for Execution of Constitutional Amendment XCVI, Official Gazette RS, No 37 (1990) and No 4 (1991), Article 5]. Thus, they were virtually rejected in late 1990 in the expectation that the issue would be dealt by a new privatization law.

expected to be adopted later in 1992.<sup>84</sup> As described below, both the law and the procedures for setting up a company are relatively well-adapted to the needs of a private market economy.

#### Types of Ownership and Forms of Companies

The 1988 law distinguishes 4 types of ownership--social, cooperative, mixed, and private--and 4 forms of companies--the joint stock company, the limited liability company, the limited partnership, and the general partnership (Article 2). Social ownership is a remnant of the previous regime. Enterprises with social ownership continue under this law to be worker self-managed, although they may for the first time be set up as joint stock or limited liability companies (Articles 36-41). Cooperative ownership continues to be recognized, although it has never been widely used in practice (Article 143). Cooperatives can in principle be organized in any of the 4 forms as well as a more traditional cooperative enterprise. Mixed ownership refers to any combination of social, private, and/or cooperative ownership, whether or not there is participation by foreigners (Articles 81-131). Wholly private ownership--involving neither social nor cooperative ownership in any way--can similarly be either domestic or foreign (Articles 138-142). Firms with mixed and private ownership--those most relevant to the topic of this paper--can be set up in any of the 4 company forms provided by this law. In addition, small private activities such as shops, farms, or services (such as lawyers or craftsmen) can be carried on less formally with simple registration (Articles 141-142). In principle all forms of enterprise under all types of ownership have the same status, rights and responsibilities in the economy.

Characteristics of the Joint Stock Company (Articles 81-103). The joint stock company is similar to the French S.A. ("societe anonyme"), the German AG ("Aktiengesellschaft"), and the Anglo-American public corporation. Minimum required capital is 150 million old dinar (Article 86), or 15000 tolar--worth approximately \$29,000 in December 1988 but less than \$1500 just one year later and less than \$200 today.<sup>85</sup> Capital contributions can be in money or in-kind (Article 95), and contributions must be paid-in before the first shareholder meeting (Article 98).

Shareholders' rights and duties are quite flexible in this law, and the company's articles of association has wide latitude to tailor them to the needs of the company. Both bearer and registered shares are allowed (Article 175), and both may be freely transferred (the former by delivery and the latter by endorsement and entry in the share register). Shares can be divided into common and preferred, with the latter having priority with regard to

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<sup>84</sup> The draft of new law, called Zakon o gospodarskih družbah [The Law on Economic Companies], follows Western European--particularly German--traditions. Although it contains company forms similar to those in the current law (as discussed below), it is a longer law and its provisions are far more detailed.

<sup>85</sup> Yugoslavia suffered severe inflation in 1989, and nominal amounts in the law were not adjusted accordingly.

dividends or return of capital upon liquidation (Article 177). Although the general voting rule is one share-one vote, some shares may be accorded more than one vote or the total votes of any one investor can be limited by the articles (Article 122). Non-voting shares are also allowed (Article 89). Thus investors have wide latitude to separate control from ownership and to tailor shareholders' rights to the specific concerns of individual investors. For example, some foreign investors--such as those with highly sophisticated technology--may want management control despite having only a minority ownership interest. Or they may be more risk averse than the Slovene partner and prefer priority in the event of liquidation to anything else. These flexible rules allow joint investors to accommodate each others concerns.

Characteristics of the Limited Liability Company (Articles 104-108). The limited liability company resembles the French S.A.R.L. (societe a responsabilite limitee), the German GmbH (Gesellschaft mit beschränkter Haftung), and the American close corporation. It is intended as an alternative, less formal corporate form to be used by small groups of investors who know each other. Minimum capital was originally set at 20 million old dinar (Article 104, about \$4000 in 1988 but only \$200 one year later) and is now 8000 tolar (about \$100). Although there is no minimum or maximum number of partners prescribed by law, a partner cannot sell shares to outside parties without the consent of the other partners (Article 107). This restriction reflects the nature of the company, where all investors are expected to play an active role and where close control over the activities and ownership of the company is thus desired.

The 1988 law provided for two levels of corporate governance for both joint stock and limited liability firms--a managing board and a supervisory board. The managing board (Articles 124-127), analogous to a board of directors in the U.S., was responsible for appointing the company's senior managers and setting general guidelines for their performance. The supervisory board (Articles 128-130) was supposed to oversee the managing board by reviewing annual reports, accounts, and proposals regarding profit distribution. Members of both boards (minimum of three each) were to be appointed for four-year terms by the general meeting of shareholders or partners (Article 123). Amendments to the law in 1990 eliminated the requirement of a supervisory board,<sup>86</sup> although one may still be provided for in the company's articles of association. Aside from setting this basic structure for corporate governance, the law is flexible. The company can determine the number of members of each board and special conditions for selection in its articles of association or bylaws (Article 123).

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<sup>86</sup> Zakon o spremembah in dopolnitvah zakona o podjetjih [Law on Changes and Additions to the Company Law], Yugoslav Official Gazette, No 46 (1990), Article 44. The new draft Slovene company law provides for mandatory supervisory boards.



As noted earlier, workers no longer have an explicit role in management.<sup>87</sup> Even the requirement that joint stock companies have workers' councils, which was contained in the 1988 law, remained only as option in the 1990 amendments (Article 45). Workers' councils are still required in socially-owned companies (Article 47), but the law envisions that such companies will soon be transformed into share-issuing joint stock companies in which workers' managerial rights will derive solely from any share ownership they may have. Workers' rights in joint stock companies will henceforth be protected by collective bargaining agreements governed by republic-wide standards combined with enterprise-specific agreements.<sup>88</sup>

Characteristics of the two types of partnership. The two types of partnership are the limited partnership<sup>89</sup> and the "company with unlimited joint and several liability" (or general partnership) (Articles 109-119). Both forms are similar to analogous forms typical of market economies. In the limited partnership, the limited partners are passive investors and their liability is limited to their investment (Article 109). The general partners manage the company and have unlimited liability (Article 109). Share capital can be transferred to third parties only with the agreement of the founders, unless otherwise specified in the articles of association (Article 112). In the general partnership, all partners are assumed to be active in management and are fully liable for the obligations of the company (Articles 115-117). As with the limited partnership, share capital can be transferred to third parties only with the agreement of all partners (Article 119).

#### Procedures for Establishing a Company

Setting up a company has typically been relatively easy and inexpensive in Slovenia. The founders must first prepare the articles of association and deposit the initial capital in a temporary account with the Service of Social Accounting (Company Law, Articles 81-84). The signatures of the firm's directors must be approved by the court (Article 184). Unlike many other European countries (including those in Eastern Europe), approval of the firm's

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<sup>87</sup> Only workers in socially-owned enterprises continue to have an explicit role in management under the new law (Articles 63-75). If such enterprises invest jointly with private investors in mixed enterprises, their workers will have a management role in such mixed enterprises, but it will be strictly proportional to the amount of resources invested (Article 122).

<sup>88</sup> See Zakon o temeljnih pravicah iz delovnega razmerja [Law on Basic Rights from Employment], Yugoslav Official Gazette, No 60 (1989) and Zakon o delovnih razmerjih [Law on Labor Relations], Official Gazette RS, No 14 (1990).

<sup>89</sup> The partners have the option of raising capital through the issuance of individual shares, in which case the rules on share purchase provided for joint stock companies are applicable (article 114). This is similar to the "limited partnership divided by shares" found in some other European countries.

articles by a notary is not required, although such requirement is now being debated.<sup>90</sup> Companies with foreign participation must then submit the joint venture agreement (or similar document) to the Ministry of Foreign Affairs, whose approval is deemed granted if no response is received within 30 days. All companies must then send all relevant documents to the regular court at the seat of registration, which is supposed to issue its decision within 30 days (Company Law, Articles 183-187). The company is a legal entity upon approval by this court. In practice approvals by both the Ministry of Foreign Affairs and the courts have been relatively quick. The final step is entry in the court register (at which time it is binding against third parties) and publication in the Official Gazette (Article 186).

### Foreign Investment

Foreign investment was first allowed in Yugoslavia in the 1978, with the passage of the Law on Investment of Foreign Persons into Domestic Organizations of Associated Labor.<sup>91</sup> This law was, however, relatively restrictive, with high requirements for invested capital and strict limits on profit repatriation. Furthermore, foreign investment had to accommodate the Yugoslav self-management rights of workers, which in practice meant an often intolerable sacrifice of managerial control for the foreign partner. Amendments in 1984 and 1986 did little to change this restrictive regime. As a result, the flow of foreign investment was small, amounting to less than 1 percent of domestic investment over this period (but still more significant than that in any other CEE country in that period).

The Foreign Investment Law of 1988,<sup>92</sup> introduced simultaneously with the Enterprises Law, represented a radical departure from the previous regime. Pursuant to this law, which is still the law in force in Slovenia today,<sup>93</sup>

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<sup>90</sup> Predlog zakona o notariatu [Proposal of Law on Notary], Internal Material, Government of the Republic of Slovenia, January 1992. The requirement of notarial approval is proving to be an expensive and time-consuming process in some other reforming socialist countries, and Slovenia should consider its merits carefully before introducing it. Part of the problem in these other countries arises from the shortage of notaries, in part due to long-standing government monopolies over the profession. See Gray et.al., Poland Legal Framework and Romanian Legal Framework.

<sup>91</sup> Zakon o vlaganju sredstev tujih oseb v domače organizacije združenega dela [Law on Foreign Investment into Domestic Organizations of Associated Labor], Yugoslav Official Gazette, No 18 (1978), most recent amendment Yugoslav Official Gazette, No 38 (1986).

<sup>92</sup> Supra note 81.

<sup>93</sup> As with many of the other Yugoslav laws discussed in this paper, Slovenia implicitly recognized this law as applicable in late 1990, with the only change being the approving ministry (which is now the Slovenian Ministry of Foreign Affairs). A new foreign investment law is now under preparation in

foreigners (whether legal entities or natural persons) may freely invest in Yugoslav firms and may own up to 100 percent of the assets (Article 10). The form of foreign investment is governed by the enterprises law (with its 4 forms as outlined above), and foreigners are free to invest in firms with social, cooperative, mixed, or private ownership.<sup>94</sup> No matter the form or ownership, they are guaranteed management rights and the right to share in profits or return of capital, both in proportion to the amount invested (Article 5). No limits are placed on profit repatriation (Article 5 para 6). Broad national treatment is provided by Article 8:

Enterprises with foreign investments shall have the same status, rights and responsibilities on the unified Yugoslav market as socially-owned enterprises.

The law does not specify a particular tax regime or special tax incentives for foreign investment. Rather it provides that the individual republics shall decide on the tax regime and on tax reliefs on start-up profits or amounts reinvested (Article 8). Slovenia recently reformed its tax structure, and its company income tax rate--30 percent--is now among the lowest in Europe.<sup>95</sup> New firms, whether domestic or foreign, get special treatment. Special tax incentives for foreign investment alone are not advisable; not only do they complicate tax administration and unfairly discriminate against domestic firms, but they are unlikely to have a major impact on the volume of investment as long as the underlying tax structure is reasonable.

Despite the far-reaching changes in attitude and treatment toward foreign investment embodied in the 1988 law, the most important change introduced that year for foreign investors was the repudiation of worker self-management and the introduction of modern corporate forms contained in the Enterprise Law. The concept of worker self-management was in constant tension with the desire of foreigners to control and manage their investments. Even if foreigners obtained day-to-day management rights by agreement, they could not remove the workers' ultimate power to repudiate such agreement.<sup>96</sup> The new laws for the first time give managerial authority clearly to the owners of

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Slovenia.

<sup>94</sup> Article 9 also specifies that foreigners may invest in banks and other financial institutions, insurance organizations, and "other forms of cooperation and joint business as specified by statutes." Investments in the extractive industries require legislative approval (Article 19), and wholly-owned foreign investments are prohibited in armaments, rail and air transport, communications and telecommunications, insurance, publishing, and the mass media (Article 21).

<sup>95</sup> Official Gazette RS, No 44 , No 45 and 48(1990), as amended in Official Gazette RS, No 34 (1991).

<sup>96</sup> Ives, p. 11.

a firm, and provide flexible rules within which the investors can work out their own optimal balances between ownership and authority.

Even with these important changes in 1988, there has been relatively little foreign investment in the past 3 years. The main reasons are clear--extreme economic instability followed by political instability. Yugoslavia's inflation soared to an estimated 2800 percent<sup>97</sup> in 1989 due to a lapse of fiscal and monetary control in the face of growing enterprise deficits. Dramatic attempts at stabilization at the beginning of 1990 succeeded in bringing down inflation and resurrecting some positive economic signs,<sup>98</sup> but they were quickly followed by the growing political crisis and eventually civil war. The returning relative calm in Slovenia as its independence begins to be recognized around the world gives renewed hope that the political and economic climate for foreign investment will support the favorable legal framework introduced earlier to stimulate a renewed inflow of foreign capital.

### Bankruptcy

Although Yugoslavia, like most of the other socialist countries, had a bankruptcy law on the books throughout its socialist period,<sup>99</sup> this law was put to little use. Bankruptcy procedures typical of those in industrial market economies were not appropriate in the socialist setting because of the absence of a clear conflict of interest among various claimants--whether shareholders, workers, or creditors. In most Central and Eastern European countries all of these claimants were arms of the state or ultimately supported by the state. For example, state-owned banks had little incentive to collect on bad debts because state guarantees lied explicitly or implicitly behind such debts. And workers were guaranteed jobs, steady income, and related support systems whether or not their particular firms thrived. Measures in lieu of bankruptcy, including financial "rehabilitation" and

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<sup>97</sup> Gelb and Gray, 1990.

<sup>98</sup> For more information on recent economic developments, see Rocha and Coricelli (1991), Gelb and Gray (1991), and Stiblar (1992).

<sup>99</sup> The 1929 law (Dika, M.: Stečajno pravo i pravo prisilne nagodbe, Informator 2341, Zagreb, 1976, page 2) was applied in Yugoslavia until 1965, when a new law was adopted. {Zakon o prisilni poravnavi in stečaju [ Law on Compulsory Settlement and Bankruptcy] Official Gazette FPRY, No 15 ('65)}. The latter was amended several times (Official Gazette SFRJ No 55(1969), 39 (1972), 16 (1974). It was replaced by the new law {Zakon o sanaciji in prenehanju OZD [Law on Rehabilitation and Liquidation of the OALs], Official Gazette SFRY, No 72 (1986) with most recent amendment Official Gazette SFRJ No 69 (1988)}. Finally, it was replaced by the new law, discussed below. Finally it was replaced by the 1989 law discussed below.

"compulsory settlement",<sup>100</sup> were relied upon to keep the ailing firm alive and preserve employment.

Bankruptcy takes on much more importance as these economies attempt to transform their economies and develop private markets. Just as a modern and comprehensive enterprise law is needed to govern the entry of new private companies into the market, so a bankruptcy law is needed to govern the exit of private firms who fail. Many new or privatized firms are likely to fail as the economy undergoes fundamental structural adjustment. Bankruptcy law is important not only to firms' shareholders, employees, and creditors, but it is of critical importance to the newly emerging private firms themselves. The ability of banks and other financial creditors to collect on bad debts is a sine qua non for the growth of private credit, which is itself essential to the start-up of new firms.

Yugoslavia passed a new bankruptcy law in December 1989.<sup>101</sup> The same month it adopted a new package of economic policies<sup>102</sup> designed to bring down the hyper-inflation of 1989 and open the economy to foreign competition. The government vowed to stop bailing out loss-making firms, forcing them instead into bankruptcy. The Social Accounting Service was instructed to file a bankruptcy case any time a social enterprise was in arrears for more than 60 days. As a consequence, the number of bankruptcies increased rapidly. While only 62 bankruptcy petitions were filed in Slovenia between 1983 and 1989 (with 41 ending in closure), 134 petitions were filed in 1990 and 234 in the first half of 1991.<sup>103</sup> Among them were numerous large firms, and the rate of unemployment more than doubled in Slovenia from 1990 to 1992. Fearing the social disruption that would result from the ever-increasing number of

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<sup>100</sup> The compulsory settlement procedure called on debtors and creditors to reach mutual agreement under which creditors collected reduced amounts and the debtor remained alive.

<sup>101</sup> Zakon o prisilni poravnavi, stečaju in likvidaciji [The Compulsory Settlement, Bankruptcy, and Liquidation Law], Yugoslav Official Gazette, No 84 (1989). This was part of an expanded effort during this time to adopt a legal framework (such as the enterprise and foreign investment laws described above) suitable to a market economy. In addition to bankruptcy and compulsory settlement, the 1989 law has a chapter devoted to liquidation for reasons other than insolvency.

<sup>102</sup> These included tight monetary and credit policies, a devalued and newly-pegged exchange rate, and a dramatic opening of the economy to international trade. See Rocha and Coricelli (1990) and Gelb and Gray (1991).

<sup>103</sup> These numbers may somewhat overstate actual attempts to close companies, as the bankruptcy procedure was sometimes used to shed unwanted labor or rid the company of its debt burden, while the firm continued its activity under a new name. In fact, bankruptcy is currently one means to "spontaneous privatization" in Slovenia, as firms rid themselves of unwanted liabilities and are sold at low prices to new private owners.

bankruptcies, the Yugoslav authorities suspended the right of the Social Accounting Service to bring cases in mid-1992.

Under the 1989 Yugoslav law, now still valid in Slovenia, bankruptcy proceedings may be initiated by creditors, the debtor himself or other persons as determined by law (Article 3).<sup>104</sup> A bankruptcy board composed of three judges oversees the proceedings, with day-to-day management of the proceedings by a bankruptcy judge (who is not a member of the board) (Article 13). Through public notice creditors are asked to post their claims. The board may form a board of creditors to represent creditors' interests if requested by creditors with more than half of all claims (Article 53). The management of the insolvent company is turned over to a trustee, who takes active steps to wind down the activities of the company (Articles 61-64). Workers are let go (Article 93), an estate in bankruptcy is formed (Article 95), the accounts of the debtor are suspended (Article 97), and all activities are terminated except for the completion of transactions already begun (Article 119). Assets are sold, and the proceeds are used to pay the costs of the proceeding itself and then to satisfy creditors' claims, generally on a proportional basis (Article 121).

Although the law does not allow specifically for reorganization,<sup>105</sup> an insolvent debtor is entitled to propose a compulsory settlement to creditors prior to or concurrent with bankruptcy proceedings (Article 18). Under compulsory settlement, the company is allowed to continue its normal activities under existing management but not to sell or mortgage property (Article 47). If creditors with over 50 percent of all claims agree, the three judge settlement board can approve a settlement whereby a percentage--not less than 50 or 60 percent--of each claim will be repayed over three years and the remainder forgiven (Article 21). In contrast to reorganization, compulsory settlement does nothing to change the structure or activities of the debtor and thus to insure that the indebtedness problem is alleviated in the longer run.

Although Slovenia continued to use the Yugoslav law after declaring its independence, the Slovene government is now in the process of drafting a new bankruptcy law. The new law, which is still in draft,<sup>106</sup> is intended to remedy some of the deficiencies of the old one. Most importantly, it introduces the possibility of financial reorganization in lieu of either compulsory settlement or closure of insolvent firms. Such reorganization

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<sup>104</sup> As noted above, the law also gives the Social Accounting Service the authority to initiate bankruptcy proceedings, but this has been temporarily suspended.

<sup>105</sup> Reorganization is likely to be preferable to bankruptcy from an economy-wide view if the value of the firm as a going-concern exceeds the value of its assets in liquidation.

<sup>106</sup> Predlog za izdajo zakona o prisilni poravnavi in stečaju [Proposal to Adopt Law on Compulsory Settlement and Bankruptcy], Internal material of the Government of Slovenia, Ljubljana, November 1991.

could include, for example, sale of part of the assets of the firm, streamlining the activities of the firm or laying off workers to reduce costs, merger of the firm with another, or sale of the entire firm as a going concern. The debtor can introduce a plan for financial reorganization concurrently with a plan for compulsory settlement, and both are voted on by creditors. Because of the possibility of financial reorganization, compulsory settlement is no longer the only alternative to bankruptcy, and thus it takes on less importance. The bankruptcy board is no longer obligated, for example, to test the compulsory settlement route by trying to assess either the willingness of the majority of creditors to settle or the adequacy of the bankrupt's assets to meet the claims under such settlement. Rather, the board and the creditors can consider the alternative of reorganization simultaneously or in lieu of either of the other options.

The Slovene draft also contains other changes, including the downgrading of the Social Accounting Service (which is no longer competent to introduce bankruptcy proceedings), the introduction of the concept of shareholders' claims (which are subordinate to those of creditors), and the replacement of the bankruptcy judge by the president of the bankruptcy board. Liquidation is not covered by the new draft, but is to be regulated instead by a new company law now under discussion.

The main problem with regard to bankruptcy in Slovenia, as in other reforming socialist economies, is not the law but rather the incentives still inherent in the system. Creditors are very hesitant to bring cases to court for several reasons, including the high costs of the proceedings,<sup>107</sup> the inexperience of most judges and trustees, the questionable value of the remaining assets of the debtor (especially in today's recessionary environment), and the lingering hope that the public treasury will bail them out from bad debts. More generally, many Slovene enterprises are illiquid or insolvent, and the government and Parliament both fear the social disruption that strict enforcement of bankruptcy laws might create. Meanwhile, other means to collect on bad debts, including creation and foreclosure of security interests in real or moveable property, are themselves underdeveloped in both law and practice.<sup>108</sup> Bankruptcy is only one part of this larger legal arena of debtor and creditor rights that will take some time to develop.

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<sup>107</sup> These costs are exacerbated by the requirement that creditors prove that a valid claim exists and was not able to be satisfied in any other way.

<sup>108</sup> Mortgages on real property are impeded by the poor state of land registration and the difficulty of evicting tenants. Security interests in moveable property, although legal under the Law on Obligations, are not used in practice, in part because of the absence of any central registry.

### Contract Law

In 1991 Slovenia implicitly adopted the Yugoslav law on contracts, the 1978 Law on Obligations.<sup>109</sup> This law, along with the Law on the Foundations of Property Relations discussed earlier, had replaced the Austrian Civil Code which had previously governed both property and contract relations. The 1978 Law on Obligations did not depart radically from its Austrian predecessor, and its principles fit squarely within the civil law tradition. For example, the generally-applicable sections in Part I of the law provide for freedom of contract and equality of rights among the parties and set out modern rules of offer and acceptance, concepts of capacity and invalidity (on grounds of error, deceit, or duress), notions of consideration (or equivalence of things exchanged), standards for completion, and remedies for breach of contract. The law then provides in Part II special rules for particular types of contracts, including (among other) sale, gift, rent, employment, storage, business representation, insurance, warranty, assignment, and secured and unsecured credit.

Although drafted during the socialist period, the 1978 law included few references to socialist or self-management principles. This was because it was always meant to govern relations between private parties, while relations involving public entities were to be covered by other laws.<sup>110</sup> Thus, major revisions are not needed (as, for example, were needed in Poland<sup>111</sup>) for the law to provide an adequate framework for private contracts in the post-socialist era.<sup>112</sup>

### Antimonopoly Law

As in other CEE countries, Yugoslav firms were quite large and industry and trade was quite concentrated during the socialist period when compared

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<sup>109</sup> Zakon o obligacijskih razmerjih [Law on Obligations], Yugoslav Official Gazette, Issue No 29 (1978), most recent amendment Yugoslav Official Gazette, No 39 (1985).

<sup>110</sup> Some private contracts in particular areas, such as securities, are also governed by specific legislation. Zakon o vrednostnih papirjih [Law on Papers of Value], Yugoslav Official Gazette, No 64 (1989), with most recent amendment Yugoslav Official Gazette No 29 (1990).

<sup>111</sup> See Gray et. al., Polish Legal Framework, 1991.

<sup>112</sup> The law does include some provisions regarding the relationship of private obligations to the plan and to self-management agreements. These provisions, to be removed in future amendments, do not interfere with the sections governing purely private obligations.



with industry in market economies at a similar level of development.<sup>113</sup> Collusion was actually encouraged in Yugoslavia, as all producers of a certain product were obligated to form associations with each other, and traders of that product were required to conclude self-management agreements with producers.<sup>114</sup> Traders were also encouraged to form sector-specific trade monopolies. Although they were not formally supposed to collude in price-setting or market sharing behavior, once brought together they were able to collude and also to exert a powerful force in lobbying for protection from international competition. The resulting hierarchy of power in the economy put producers first, traders second, and consumers--who remained unorganized and unrepresented--last.

Clearly these old ideas and practices must radically change as Slovenia moves to a private market economy. Antimonopoly law is needed to break up monopolies and end collusive behavior among producers and/or traders, and unfair competition legislation is needed to prevent deceptive trading practices. The existing legal framework is inadequate in both areas. The only relevant law now in force in Slovenia is the Yugoslav federal Law on Trade (1990),<sup>115</sup> which remains applicable in Slovenia after independence. It replaced the federal Law on Unfair Competition of 1974.<sup>116</sup> Although it provides a beginning framework for limiting anticompetitive behavior, this law applies only to trading activities, whether retail or wholesale. Similar behavior in production or services is not covered by the law. Furthermore, the law has hardly been applied in practice and thus has little relevance in practice, although the previous 1974 law is generally thought to have had some positive effect on business practices.

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<sup>113</sup> Some CEE countries with more classically-socialist systems than Yugoslavia's specifically followed a one product-one firm principle. Although highly inefficient in a capitalist system, such organization was more efficient in a socialist one because it minimized transaction costs and thus facilitated top-down administrative control.

<sup>114</sup> Zakon o obveznem združevanju dela in sredstev OZD, ki se ukvarja s prometom blaga in storitev, s proizvajalnimi OZD [Law on Obligatory Association of Work and Assets of OALs, which Deal with Transfer of Goods and Services, with Production OALs], Yugoslav Official Gazette, No 66 (1980), most recent amendment Yugoslav Official Gazette, No 70 (1985). Traders were in practice in a subordinate relationship to producers. This result concurred with Marxist doctrine, which considered only material production to be value-enhancing and essentially branded trading as "unproductive exploitation".

<sup>115</sup> Zakon o trgovini [Law on Trade], Yugoslav Official Gazette, No 46 (1990).

<sup>116</sup> Zakon o zatiranju nelojalne konkurence in monopolnih sporazumov [Law on Oppression of Unloyal Competition and Monopoly Contracts], Yugoslav Official Gazette, No 24 (1974), most recent amendment Yugoslav Official Gazette, No 58 (1989).

The trade law prohibits certain monopolistic practices (Articles 21-29, unfair competition (Articles 30-32), speculation (Article 33), and "limitation of the market" (Articles 33-34). Prohibited as monopolistic agreements or behavior are (Article 23) such practices as division of market share, price collusion, refusals to deal, and "misuse" of a dominant position (defined as controlling over 40 percent of the Yugoslav market<sup>117</sup>). Prohibited as unfair competition are, among other things, advertising with an inability to deliver, misuse of trademarks, and hiding of defects in merchandise (Article 31). "Speculation" includes provoking disruptions in the market or "unjustified" price increases (Article 32); this category is somewhat of a holdover from the socialist period and could include many strategic moves of competitive companies that are entirely legal in industrial market economies. Finally, "limitation of the market" is a broad category that includes acts that block free entry or exit or the free exchange of goods (Article 33). In addition to prohibiting supposedly anticompetitive activities, the law establishes a federal commission of consumer protection (Article 16) and charges inspection officers with the ministry of trade with enforcement responsibilities (Articles 35-39). Both civil suits (Articles 40-41) and criminal penalties (fines) (Articles 42-47) are envisioned for breach of the law.

Slovenia is in the process of preparing a new law on the protection of competition and hopes to pass such a law in 1992.<sup>118</sup> Although still in the early draft stage, it appears that the Slovenes intend to combine antimonopoly and unfair competition principles in one law and generally to follow the norms of German and U.S. competition law. The focus is on any limitation to competition (Articles 2-11) as broadly interpreted, rather than simply monopolistic behavior. In the area of antimonopoly, the draft law forbids horizontal or vertical agreements in restraint of trade (Article 3) (as judged individually on a "rule of reason" basis), abuse of a dominant position (defined as 40 percent market share for one firm, Articles 9-10), and mergers that have the effect of limiting competition (Article 11). In the area of unfair competition, the draft law generally follows the previous Yugoslav legislation and also prohibits misuse of a competitor's reputation or discriminatory advertising based on national, political, or religious adherence (Article 12). Prohibition of speculation (Article 13) remains in the draft law, but supposedly only until "normal" market conditions prevail. For example, withdrawing goods from the market is illegal if there is not adequate competition. For purposes of enforcement, the draft law envisions the creation of a new specialized agency, the Agency for the Protection of Competition (Articles 19-21), along the general model of the Bundeskartellamt in Germany or the Federal Trade Commission in the United States. The Agency would render rulings in administrative procedures, with right of appeal to the Slovene Supreme Court (Article 22).

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<sup>117</sup> Presumably the 40 percent rule now applies to the Slovene market.

<sup>118</sup> Osnutek zakona o varstvu konkurence [Draft of the Law on Protection of Competition], Internal Material, Government of the Republic of Slovenia, July 1991.

It will take time for Slovenia to work out and pass a new competition law, and even longer for a working enforcement agency to be set up. Opening the economy to international trade can go far in promoting competition in the tradeable goods sectors, especially given the small size of Slovenia's economy. However, domestic antimonopoly regulation is also needed to promote competition in nontradeables sectors and more generally to help set standards for acceptable commercial behavior, especially given the anticompetitive socialist legacy and the deep-seated distrust of competition that this legacy created in the population.

### Judicial Institutions

The many parts of the legal framework discussed above will take on true meaning only as they are interpreted and enforced through judicial institutions, including courts and arbitration panels that resolve disputes and attorneys who advise and educate clients about legal norms in their day-to-day work. Although far more exposed to market-oriented norms and principles than some of their socialist neighbors, Slovene legal institutions still have far to go in gaining the experience and expertise to fulfill the promise of the evolving legal framework.

### The Legal Profession

There are many trained legal professionals in Slovenia, but few who are well-trained for the needs of a newly-emerging private market economy. Yugoslavia has traditionally had a very high number of law students relative to other countries,<sup>119</sup> in part because it was one of the very few countries offering a short (two-year) first degree program. However, its number of lawyers is proportionately much lower because a high percentage of law students do not graduate. Although still high by international standards, Slovenia has traditionally had fewer law students and a higher graduation ratio than other Yugoslav republics. Now around 300 new second degree law students graduate from the two Slovene law schools per year.<sup>120</sup>

Despite the sizeable number of law students and graduates, there have traditionally been relatively few practicing professional lawyers in Yugoslavia and Slovenia. Most law graduates have been employed in general business or government administration, with only between 5 and 10 percent of law graduates going into law practice or the judiciary.<sup>121</sup> Attorneys have tended also to work for the social sector, and private lawyers, although

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<sup>119</sup> In fact, in the early 1980s Yugoslavia had the highest number of law students relative to its population of any country in the world (Stiblar, 1984).

<sup>120</sup> Stiblar (1984).

<sup>121</sup> Out of 80,000 lawyers in Yugoslavia in 1988, about 6000 were judges and roughly the same number were attorneys. Statistical Yearbook of Yugoslavia 1989.

allowed to practice by law,<sup>122</sup> have been rare indeed (with around 600 in Slovenia). The number of private attorneys is expected to increase rapidly with the increasing role of private market forces. New drafts of laws prepared at the beginning of 1992<sup>123</sup> are designed to regulate the profession and set the higher standards for entrance through a bar examination.

Furthermore, those lawyers that do work in legal professions tend to be inadequately prepared for the legal demands of a market economy. Until the mid-1980s the law schools' curricula and law practice provided little exposure to market-oriented commercial law principles. Social property and all relations and obligations stemming from it were the principle topics of study and work. This began to change, however, in the late 1980s, when the principles and institutions of industrial market economies began to creep into law curricula. Many law professors had been formally educated in the West, and they could draw on their earlier learning to introduce these new areas of study.

But while current law students are getting increasing exposure to market-oriented commercial law, the job of retooling existing judges and lawyers is a major challenge. Although judges in particular remain respected for their honesty and integrity, they understandably lack experience and expertise in many of the more complex areas of law applicable to market economies. Technical assistance, training, and time can all help to remedy this situation, as can increased publication of legal articles and court decisions.

### The Court System

The Slovene court system is divided into three levels, with 8 basic courts, 4 appellate courts, and one supreme court, in addition to the constitutional court discussed earlier.<sup>124</sup> Twelve specialized "courts of associated labor", which deal mainly with labor disputes in socially-owned enterprises, also still continue in operation. As described earlier, cases in basic courts are handled by panels of professional and lay judges, while those in higher courts are handled exclusively by professional judges. Slovenia's 14 courts are currently staffed by about 500 judges and almost 7000 lay judges.<sup>125</sup>

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<sup>122</sup> In some socialist economies lawyers were not--and in Romania's case are still not--allowed to practice independently. See Gray, et. al., Romanian Legal Framework (1991).

<sup>123</sup> Osnutek zakona o odvetništvu [Draft Law on Lawyers], Internal Material, Government of the Republic of Slovenia, March 1992.

<sup>124</sup> Zakon o rednih sodiščih [Ordinary Court Law], Official Gazette SRS, No 10 (1977), with most recent amendment Official Gazette SRS, No 8 (1990).

<sup>125</sup> Statistical Yearbook of Slovenia, 1990.

The courts are used extensively in resolving disputes. Some 150,000 civil cases were handled by first-level courts and some 94,000 by appeals courts in 1990 alone. Although courts are used extensively, the wait is long--on average 3-5 years and sometimes as long as 10 years--for a civil case to be decided. The court system, while not particularly inefficient when compared to systems in neighboring countries, could benefit from enhanced training and technical assistance, particularly in relatively new and unfamiliar commercial areas such as company, bankruptcy, and competition law.

As in other post-socialist economies, arbitration is not well-developed in Slovenia. It has not been seen as a viable alternative to regular court procedures in handling domestic commercial disputes, despite the lengthy procedures and long delays typical in the courts. Arbitration in the area of international trade has been an accepted tradition, and has been handled in Yugoslavia by the Chamber of Commerce since 1981.<sup>126</sup> But only in 1990 did Slovenia authorize its Chamber of Commerce to set up a general commercial arbitration facility applicable to domestic as well as international disputes. Although still in its infancy, this is a promising new avenue--a way to "privatize" dispute resolution and thus save on scarce legal and administrative resources--that could usefully be supported and expanded in the future.

### Conclusion

Slovenia is making steady progress in creating a basic legal framework in which the private sector can grow and develop. It benefits from the efforts of Yugoslav economic and legal reformers since mid-1988, and from the fact that it was willing to adopt many of the Yugoslav solutions upon independence rather than try to start again from scratch. Few changes appear to be needed in some areas of law--including company, foreign investment, and intellectual property. In others, however, such as bankruptcy and antimonopoly law, both the legal framework and the legal institutions to interpret and implement it are still lacking an adequate structure and sufficient credibility to support a private market economy. As in other post-socialist economies, real property rights is an area of tremendous uncertainty, both because of Slovenia's determination to reverse the past through reprivatization and because of the limits it places on foreign ownership. Finally, true legal reform--not just on paper but in practice--cannot move quicker than political and economic reform. Slovenia will hopefully be able to advance in these two latter areas in 1992, and thus create an attractive setting for new private sector investment for which the legal groundrules are now being laid.

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<sup>126</sup> Poslovník o zunanjetrgovinski arbitraži [Procedure on Foreign Trade Arbitrage], Yugoslav Official Gazette, No 70 (1981).

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